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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 GIA L. LAWS,

11 Plaintiff,

12 v.

13 CITY OF SEATTLE, et al.,

14 Defendants.

CASE NO. C09-033JLR

ORDER

15 **I. INTRODUCTION**

16 This matter comes before the court on Plaintiff Gia L. Laws's motion for partial
17 summary judgment (Dkt. # 25). Ms. Laws asks the court to declare RCW 4.24.350(2)
18 unconstitutional under the United States Constitution and the Washington State
19 Constitution. Similar challenges to RCW 4.24.350(2) have already been considered and
20 rejected by four district court judges of the Western District of Washington. Having
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1 reviewed the motion, as well as all papers filed in support and opposition, and deeming
2 oral argument unnecessary, the court DENIES the motion (Dkt. # 25).

3 **II. BACKGROUND**

4 On April 3, 2008, Ms. Laws boarded a bus at Third Avenue and James Street in
5 downtown Seattle, Washington, followed by a woman brandishing a knife. (Am.
6 Compl. (Dkt. # 16) ¶ 12.) Passengers alerted the bus driver to the woman's presence,
7 but the driver did not stop the bus immediately. (Am. Compl. ¶ 13.) The woman,
8 standing in the isle, declined the offer of a seat. (Am. Compl. ¶ 14.) Ms. Laws, who
9 was six months pregnant at the time, asked the woman if she could pass by her. (Am.
10 Compl. ¶ 15.) In response, the woman pushed on Ms. Laws's left shoulder and pointed
11 the knife at Ms. Laws's abdomen. (*Id.*) "She has a knife!" a passenger screamed. (*Id.*)
12 The woman continued to point the knife at Ms. Laws until another passenger screamed
13 and Ms. Laws pushed the woman out of her way, running to the front of the bus. (Am.
14 Compl. ¶¶ 16-17.) "She has a knife!" Ms. Laws told the driver. (Am. Compl. ¶ 17.)

15 When the bus arrived at Fifth Avenue and James Street, the driver stopped the
16 bus and opened the doors. (Am. Compl. ¶ 18.) As she describes it, Ms. Laws felt
17 herself dragged forcefully backwards by the arm, down the steps of the bus. (*Id.*) She
18 subsequently realized that it was Defendant Officer Scott Schenck of the Seattle Police
19 Department who had taken hold of her. (*Id.*) Ms. Laws told Officer Schenck that she
20 was not the knife-wielding woman. (Am. Compl. ¶ 21.) Ms. Laws alleges that Officer
21 Schenck shoved her against a wall and pulled on her right wrist, causing her to lose her
22 balance and fall to the ground. (Am. Compl. ¶ 22.) She states that Officer Schenck told

1 her she was under arrest, although she was released shortly thereafter. (Am. Compl. ¶¶
2 23, 29.)

3 In her amended complaint, Ms. Laws alleges both federal and state causes of
4 action against Officer Schenck and Defendants the City of Seattle, King County, and
5 five unnamed officers of the Seattle Police Department. (Am. Compl. ¶¶ 31-46.) In
6 response, Officer Schenck filed a counter-claim against Ms. Laws for malicious
7 prosecution under RCW 4.24.350. (Countercl. (Dkt. # 18) ¶ 1.) Specifically, Officer
8 Schenck alleges that Ms. Laws instituted this action with knowledge that the allegations
9 in her amended complaint as to Officer Schenck are false and unfounded, and that she
10 instituted this action with malice and without probable cause. (*Id.*) Officer Schenck
11 seeks recovery for injury in an amount to be proven at trial or an amount of liquidated
12 damages as provided by RCW 4.24.350(2), together with attorneys' fees and costs. The
13 City of Seattle also requests reimbursement of its attorneys' fees and costs under the
14 statute.

15 Pursuant to the instant motion, Ms. Laws seeks a determination that RCW
16 4.24.350(2) is unconstitutional under the United States Constitution and the Washington
17 State Constitution. (*See generally* Mot. (Dkt. # 25) at 3-22.) Ms. Laws levels a wide
18 range of constitutional challenges at RCW 4.24.350(2), alleging (1) that the statute
19 infringes on the First Amendment right to petition and is unconstitutionally overbroad,
20 (2) that the statute constitutes impermissible viewpoint discrimination under the First
21 Amendment, (3) that the statute violates the Equal Protection Clause of the Fourteenth
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1 Amendment, and (4) that the statute violates article I, sections 4, 5, and 12 of the
2 Washington State Constitution.

3 **III. ANALYSIS**

4 **A. Malicious Prosecution Statute**

5 RCW 4.24.350 permits a defendant to counterclaim for malicious prosecution
6 when the underlying civil action “was instituted with knowledge that the same was false,
7 and unfounded, malicious and without probable cause in the filing of such action”
8 RCW 4.24.350(1). Washington law ordinarily requires proof of seven elements to
9 support a malicious prosecution claim arising from a civil action. *Clark v. Baines*, 84
10 P.3d 245, 248-49 (Wash. 2004). Specifically, a claimant must show: (1) that the
11 prosecution claimed to have been malicious was instituted or continued by the defendant;
12 (2) that there was want of probable cause for the institution or continuation of the
13 prosecution; (3) that the proceedings were instituted or continued through malice; (4) that
14 the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; (5)
15 that the plaintiff suffered injury or damage as a result of the prosecution; (6) an arrest or
16 seizure of property; and (7) that the plaintiff suffered special injury of a nature that would
17 not necessarily result from similar actions. *Id.*

18 RCW 4.24.350(2) eliminates two of the traditional seven elements when a
19 malicious prosecution claim is brought “by a judicial officer, prosecuting authority, or
20 law enforcement officer for malicious prosecution arising out of the performance or
21 purported performance of the public duty of such officer.” In full, the statute provides:
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1 In any action, claim, or counterclaim brought by a judicial officer,
2 prosecuting authority, or law enforcement officer for malicious prosecution
3 arising out of the performance or purported performance of the public duty
4 of such officer, an arrest or seizure of property need not be an element of
5 the claim, nor do special damages need to be proved. A judicial officer,
6 prosecuting authority, or law enforcement officer prevailing in such an
7 action may be allowed an amount up to one thousand dollars as liquidated
8 damages, together with a reasonable attorneys' fee, and other costs of suit.
9 A government entity which has provided legal services to the prevailing
10 judicial officer, prosecuting authority, or law enforcement officer has
11 reimbursement rights to any award for reasonable attorneys' fees and other
12 costs, but shall have no such rights to any liquidated damages allowed.

13 RCW 4.24.350(2). As the language of the RCW 4.24.350(2) makes clear, judicial
14 officers, prosecuting attorneys, and law enforcement officers need not prove two of the
15 elements of an ordinary malicious prosecution claim, *i.e.*, the elements of arrest or seizure
16 and of special damages. *See Gibson v. City of Kirkland*, No. C08-0937-JCC, 2009 WL
17 564703, at *1 (W.D. Wash. Mar. 3, 2009). In addition, RCW 4.24.350(2) permits such
18 claimants to recover liquidated damages of up to \$1,000, reasonable attorneys' fees, and
19 other costs.

20 **B. Previous Constitutional Challenges to RCW 4.24.350(2)**

21 The constitutionality of RCW 4.24.350(2) has been reviewed by five district court
22 judges sitting in Washington. *See Gibson*, 2009 WL 564703, at *1-5 (Coughenour, J.);
Pruitt v. City of Arlington, No. C08-1107 MJP, 2009 WL 481293, at *1-2 (W.D. Wash.
Feb. 23, 2009) (Pechman, J.); *Wender v. Snohomish County*, No. C07-197Z, 2007 WL
3165481 (W.D. Wash. Oct. 24, 2007) (Zilly, J.); *De La O v. Arnold-Williams*, Nos. CV-
04-0192-EFS & CV-05-0280-EFS, 2006 WL 2781278, at *2-6 (E.D. Wash. Sept. 25,
2006) (Shea, J.), vacated by 2008 WL 4192033 (E.D. Wash. Aug. 27, 2008); *Bakay v.*

1 *Yarnes*, No. C04-5803RJB, 2005 WL 2454168, at *4-8 (W.D. Wash. Oct. 4, 2005)
2 (Bryan, J.); *see also Johnson v. Hawe*, 388 F.3d 676, 687 (9th Cir. 2004). The courts in
3 *Bakay*, *Gibson*, *Pruitt*, and *Wender* rejected constitutional challenges to RCW
4 4.24.350(2) while the court in *De La O* concluded that the statute constituted
5 impermissible content discrimination. However, a split no longer exists in the
6 Washington district courts as to the constitutionality of RCW 4.24.350(2) because the
7 decision in *De La O* has been vacated. 2008 WL 4192033 (E.D. Wash. Aug. 27, 2008).

8 Having reviewed these decisions, the court rejects Ms. Laws's constitutional
9 challenges to RCW 4.24.350(2) for the reasons articulated in *Bakay*, *Gibson*, *Pruitt*, and
10 *Wender*, as discussed more fully below. These decisions address the precise arguments
11 raised by Ms. Laws in the instant motion¹, and Ms. Laws presents no authority to
12 support a different result here.

13 **C. First Amendment Challenges**

14 1. Right to Petition

15 Ms. Laws first argues that RCW 4.24.350(2) implicates the right to petition. (Mot.
16 at 3-6.) The First Amendment guarantees the right "to petition the Government for a
17 redress of grievances." U.S. Const. amend. I. It is well-settled that the right of access to
18 the courts is subsumed within the right to petition. *Bill Johnson's Rests., Inc. v. Nat'l*
19 *Labor Relations Bd.*, 461 U.S. 731, 741 (1983); *Gibson*, 2009 WL 564703, at *2. The

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21 ¹ The court notes that counsel for Ms. Laws represented the plaintiffs in both *Gibson* and
22 *Pruitt*. The arguments submitted in support of the instant motion reiterate, often verbatim, many
of the arguments presented by counsel and ultimately rejected in *Gibson* and *Pruitt*.

1 aegis of the First Amendment, however, does not shield the filing of all lawsuits equally.
2 *See, e.g., Bill Johnson's*, 461 U.S. at 743. As the Supreme Court teaches: “Just as false
3 statements are not immunized by the First Amendment right to freedom of speech,
4 baseless litigation is not immunized by the First Amendment right to petition.” *Id.*
5 (internal citations omitted).

6 By its terms, RCW 4.24.350(2) regulates only activity unprotected by the right to
7 petition because it requires that the underlying action be both knowingly false and
8 maliciously brought. *Gibson*, 2009 WL 564703, at *4; *Pruitt*, 2009 WL 481293, at *1;
9 *Wender*, 2007 WL 3165481, at *3; *see Bill Johnson's*, 461 U.S. at 743. In other words,
10 RCW 4.24.350(2) applies only to “baseless litigation,” which is not immunized by the
11 First Amendment. *See Bill Johnson's*, 461 U.S. at 743. The false and malicious claims
12 targeted by RCW 4.24.350 are not entitled to First Amendment protection.

13 Nevertheless, Ms. Laws argues that the statute is constitutionally deficient under
14 the overbreadth doctrine because it chills a substantial amount of protected First
15 Amendment activity. (Mot. at 5-6.) Ms. Laws reasons that many potential plaintiffs with
16 well-founded claims against police officers are deterred from filing suit for fear of a
17 malicious prosecution counterclaim under RCW 4.24.350(2). Under the overbreadth
18 doctrine, “a statute is facially invalid if it prohibits a substantial amount of protected
19 speech.” *United States v. Williams*, ___ U.S. ___, 128 S.Ct. 1830, 1838 (2008).
20 Application of the overbreadth doctrine is “strong medicine.” *Broadrick v. Oklahoma*,
21 413 U.S. 601, 613 (1973). Accordingly, to ensure that the doctrine’s high social costs do
22 not swallow its benefits, the Supreme Court teaches that a law may not be declared

1 overbroad unless its application to protected speech is “‘substantial,’ not only in an
2 absolute sense, but also relative to the scope of the law’s plainly legitimate applications.”
3 *Virginia v. Hicks*, 539 U.S. 113, 120 (2003). Here, Ms. Laws has not shown that RCW
4 4.24.350(2) substantially burdens protected activity in an absolute sense, much less in
5 relation to the statute’s legitimate scope. *Cf. Bakay*, 2005 WL 2454168, at *6 (“There is
6 simply not a showing here sufficient to justify that this statute in some way chills the
7 right of access to the courts.”). In support of her overbreadth challenge, Ms. Laws
8 alludes to her counsel’s “personal experience that it is a true fact that litigants who are
9 often impecunious fear a large judgment against them for attorneys’ fees if they do not
10 prevail,” and discusses two settlement conferences in which RCW 4.24.350(2) allegedly
11 played a part. (Mot. at 4.) This showing is insufficient to sustain an overbreadth
12 challenge. As in *Bakay*, Ms. Laws’s argument appears to be based on no more than her
13 counsel’s “human experience regarding how such things affect people,” which “fails in
14 the face of legislative findings.” *See Bakay*, 2005 WL 2454168, at *6. On this record,
15 the court denies Ms. Laws’s overbreadth challenge.

16 2. Viewpoint Discrimination

17 Next, Ms. Laws challenges RCW 4.24.350(2) on the basis that it constitutes
18 unconstitutional viewpoint discrimination. In *R.A.V. v. City of St. Paul*, 505 U.S. 377
19 (1992), the Supreme Court established that the government generally may not
20 discriminate based on content or viewpoint when it proscribes so-called “unprotected”
21 categories of expression. The Court explained that although the government may
22 proscribe certain limited categories of expression, such as fighting words, libel, or

1 obscenity, the government may not use these categories as “vehicles for content
2 discrimination unrelated to their distinctively proscribable content.” *R.A.V.*, 505 U.S. at
3 383-84. For example: “A State might choose to prohibit only that obscenity which is the
4 most patently offensive in its prurience—i.e., that which involves the most lascivious
5 displays of sexual activity. But it may not prohibit, for example, only that obscenity
6 which includes offensive political messages.” *Id.* at 388.

7 In *Chaker v. Crogan*, 428 F.3d 1215 (9th Cir. 2005), the Ninth Circuit applied the
8 viewpoint discrimination principles articulated in *R.A.V.* to strike down a California penal
9 statute that criminalized knowingly false speech critical of peace officer conduct, but left
10 unregulated knowingly false speech supportive of peace officer conduct. The Ninth
11 Circuit recognized that knowingly false speech regarding a public official is not within
12 the ambit of constitutionally protected speech and that “the state may prohibit knowingly
13 false speech made in connection with the peace officer complaint process.” *Chaker*, 428
14 F.3d at 1225. Nevertheless, the Ninth Circuit emphasized that its task was “to determine
15 whether ‘the specific motivating ideology or the opinion or perspective of the speaker is
16 the rationale for the restriction.’” *Id.* at 1226 (quoting *Rosenberger v. Rector & Visitors*
17 *of Univ. of Va.*, 515 U.S. 819, 829 (1995)). In reviewing the California statute for
18 impermissible viewpoint discrimination, the Ninth Circuit was troubled by the fact that
19 the statute proscribed only knowingly false speech critical of peace officers as opposed to
20 all knowingly false speech connected to the peace officer complaint process, whether
21 supportive or critical. The Ninth Circuit concluded as follows:
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1 Like the ordinance at issue in *R.A.V.*, [the California statute] regulates an
2 unprotected category of speech, but singles out certain speech within that
3 category for special opprobrium based on the speaker's viewpoint. Only
4 knowingly false speech critical of peace officer conduct is subject to
5 prosecution under [the California statute]. Knowingly false speech
6 supportive of peace officer conduct is not similarly subject to prosecution.
7 California "has no such authority to license one side of a debate to fight
8 freestyle, while requiring the other to follow Marquis of Queensberry
9 rules." Because [the California statute] targets only knowingly false speech
10 critical of peace officer conduct during the course of a complaint
11 investigation, we conclude that the statute impermissibly regulates speech
12 on the basis of a speaker's viewpoint.

13 *Id.* at 1227-28 (internal citations omitted).

14 Here, Ms. Laws argues that RCW 4.24.350(2) engages in the same type of
15 impermissible viewpoint discrimination at issue in *R.A.V.* and *Chaker*. The court is not
16 persuaded. To begin with, it is not clear whether the content discrimination principles of
17 *R.A.V.* and *Chaker* extend in full to the right to petition. *Gibson*, 2009 WL 564703, at *3.

18 As the *Gibson* court observed:

19 Filing a lawsuit is different from making a statement; the former does not
20 necessarily have a "viewpoint," whereas the latter necessarily does. Thus,
21 it not entirely clear what "viewpoint discrimination" would [look] like
22 when applied to the right to petition.

23 *Id.* For present purposes, however, the court will assume, without deciding, that the
24 filing of a lawsuit can constitute an expressive act and can convey a viewpoint such that
25 the principles of *R.A.V.* and *Chaker* apply in whole or in part, even where the lawsuit is
26 frivolous and otherwise unprotected by the First Amendment.

27 Turning to *Chaker*, the court agrees with the *Pruitt* and *Wender* courts that the
28 Ninth Circuit's decision is distinguishable on its facts and that *Chaker* does not require
29 the court to condemn RCW 4.24.350(2) as unconstitutional viewpoint discrimination.

1 *Pruitt*, 2009 WL 481293, at *2; *Wender*, 2007 WL 3165481, at *3. In addressing this
2 issue, the court is persuaded by and hereby adopts the *Pruitt* court’s consideration of
3 *Chaker*’s applicability to RCW 4.24.350(2) as follows:

4 *Chaker* is distinguishable. While the California statute was penal in nature
5 and thus actively proscribed certain conduct, RCW 4.24.350(2) is a civil
6 statute that was intended to be purely remedial. *See* Laws of 1984, ch. 133,
7 1, 3. In *Chaker*, the California statute was invalidated because only false
8 complaints against government officials were proscribed. *Chaker*, 428 F.3d
9 at 1226. In contrast, the Washington statute proscribes no conduct at all.
Washington common law provides anyone with a cause of action for
malicious prosecution; the State Legislature merely limited the elements
that must be proven by certain plaintiffs. The Washington statute limits no
one’s access to the courts, nor does it dictate what type of lawsuit may be
filed.

10 *Pruitt*, 2009 WL 481293; *see also Wender*, 2007 WL 3165481, at *3 (“*Chaker* is
11 distinguishable on at least two grounds: (i) *Chaker* concerned a substantive criminal
12 code, as opposed to a procedural civil statute; and (ii) *Chaker* involved a proscription on
13 specific types of statements, as opposed to a remedy available to specific types of
14 individuals.”). Of particular salience, as *Pruitt* makes clear, it is simply not the case that
15 Washington law only provides a cause of action for malicious prosecution in response to
16 civil lawsuits filed against police officers. Ms. Laws submits no authority to support a
17 finding that RCW 4.24.350(2) impermissibly discriminates on the basis of viewpoint.
18 The court denies Ms. Laws’s viewpoint discrimination challenge to RCW 4.24.350(2).

19 **D. Equal Protection Challenge**

20 The Equal Protection Clause of the Fourteenth Amendment guarantees that no
21 person shall be denied the equal protection of the laws. U.S. Const. amend. XIV, § 1.
22 This command “is essentially a direction that all persons similarly situated should be

1 treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

2 However, in recognition that the principles of equal protection must coexist with a wide
3 range of legislative classifications, the Supreme Court has developed a tiered system of
4 review. *See Romer v. Evans*, 517 U.S. 620, 631 (1996). First, laws that burden a
5 fundamental right or target a suspect class must face the highest standard—strict
6 scrutiny—and will be sustained only if they have been narrowly tailored to serve a
7 compelling state interest. *Id.* at 631; *Silveira v. Lockyer*, 312 F.3d 1052, 1087-88 (9th
8 Cir. 2002). Second, laws that target a quasi-suspect class will be subject to intermediate
9 scrutiny. *City of Cleburne*, 473 U.S. at 440-41. Third, laws that neither target a suspect
10 or quasi-suspect class nor burden a fundamental right will be upheld so long as the
11 legislative classification is rationally related to a legitimate state interest. *Romer*, 517
12 U.S. at 631; *Silveira*, 312 F.3d at 1088.

13 Ms. Laws argues that the court should review RCW 4.24.350(2) under strict
14 scrutiny because the statute burdens the fundamental right to petition. (Mot. at 9-10.) As
15 discussed above, however, RCW 4.24.350(2) does not burden a fundamental right
16 because it targets only the unprotected act of maliciously filing a frivolous lawsuit. *See*
17 *Bill Johnson’s*, 461 U.S. at 743; *Pruitt*, 2009 WL 481293, at *1; *Wender*, 2007 WL
18 3165481, at *3. It is also evident that the statute does not target a suspect or quasi-
19 suspect class, nor does Ms. Laws argue that it does. The court therefore declines to apply
20 strict scrutiny.

21 Ms. Laws next argues that, even if strict scrutiny does not apply, RCW
22 4.24.350(2) cannot survive rational basis review. (Mot. at 10.) Ms. Laws’s bare

1 assertion that the statute is not rationally related to any legitimate state interest is
2 incorrect: “RCW 4.24.350(2) was passed in response to the ‘growing number of
3 unfounded lawsuits, . . . filed against law enforcement officers, . . .’ and with the purpose
4 of providing a remedy to those officials.” *Pruitt*, 2009 WL 481293, at *1 (citing Laws of
5 1984, ch. 133, 1). As the court explained in *Bakay*:

6 [I]n looking at the beneficiaries of [RCW 4.24.350(2)]—police,
7 prosecutors, and judges—we note that they are set apart for many reasons.
8 We give them powers no one else has, such as the power to arrest, issue
9 warrants, bring lawsuits, and start criminal proceedings against individuals.
10 They have a unique role in our society. . . . It is not a suspect classification
to treat police officers, judges, and prosecutors as a separate class or to
distinguish them from the rest of the public. It is appropriate to come to
such conclusion because of the unique roles played in society by this class
of individuals.

11 *Bakay*, 2005 WL 2454168, at *7. The court joins with *Pruitt*, *Wender*, and *Bakay* in
12 concluding that RCW 4.24.350(2) is rationally related to a legitimate state interest and
13 survives rational basis review. *Pruitt*, 2009 WL 481293, at *1; *Wender*, 2007 WL
14 3165481, at *4; *Bakay*, 2005 WL 2454168, at *5-8. The court denies Ms. Laws’s equal
15 protection challenge.

16 **E. Washington State Constitution**

17 Ms. Laws finally argues that RCW 4.24.350(2) violates the Washington State
18 Constitution. (Mot. at 21-22.) Specifically, Ms. Laws contends that the statute violates
19 article I, sections 4, 5, and 12 of the Washington State Constitution. Ms. Laws, however,
20 provides no support for or analysis of her position and merely recites the constitutional
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1 language.² On this showing, for the reasons discussed below, the court denies Ms.
2 Laws's challenges to RCW 4.24.350(2) under the Washington State Constitution.

3 1. Article I, Section 4: Right to Petition

4 The Washington State Constitution provides that "[t]he right to petition and of the
5 people peaceably to assemble for the common good shall never be abridged." Wash.
6 Const. art. I, § 4. Ms. Laws argues that RCW 4.24.350(2) violates these principles
7 because a potential plaintiff does not have access to the courts if he or she is afraid of a
8 judgment against him or her. (Mot. at 21.) Washington interprets article I, section 4
9 consistent with the First Amendment. *Richmond v. Thompson*, 922 P.2d 1343, 1351
10 (Wash. 1996); *see Gibson*, 2009 WL 564703, at *4. As discussed above, the court is not
11 persuaded by Ms. Laws's arguments that RCW 4.24.350(2) violates the federal right to
12 petition. The court denies Ms. Laws's challenge to RCW 4.24.350(2) under article I,
13 section 4 of the Washington State Constitution.

14 2. Article I, Section 5: Freedom of Speech

15 The Washington State Constitution provides that "[e]very person may freely
16 speak, write and publish on all subjects, being responsible for the abuse of that right."
17 Wash. Const. art. I, § 5. Ms. Laws presents no independent argument that RCW
18 4.24.350(2) violates the Washington State Constitution's freedom of speech protections;
19 she refers instead only to arguments made with respect to the First Amendment. (Mot. at
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21 ² Counsel for Ms. Laws presented identical arguments regarding the Washington State
22 Constitution in *Gibson* and *Pruitt*.

21.) On this cursory showing, having already concluded that the First Amendment does not condemn RCW 4.24.350(2), the court denies Ms. Laws's challenge to RCW 4.24.350(2) under article I, section 5 of the Washington State Constitution. *See Gibson*, 2009 WL 564703, at *5; *Pruitt*, 2009 WL 481293, at *2.

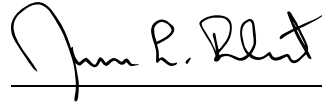
3. Article I, Section 12: Privileges & Immunities Clause

To establish a violation of equal protection under the privileges and immunities clause of the Washington State Constitution, a plaintiff must show that "the challenged law treats unequally two similarly situated classes of people." *Fell v. Spokane Transit Auth.*, 911 P.2d 1319, 1327 (Wash. 1996) (quoting *Cosro, Inc. v. Liquor Control Bd.*, 733 P.2d 539, 543 (Wash. 1987)); *see Samson v. City of Bainbridge Island*, 202 P.3d 334, 349 (Wash. Ct. App. 2009). "In the absence of any argument that the challenged ordinance violates a fundamental right or inclusion in a suspect class, rational basis review applies." *Samson*, 202 P.3d at 349. Here, Ms. Laws has not demonstrated either that RCW 4.24.350(2) treats two similarly situated classes of people differently or that the statute does not survive rational basis review. Therefore, the court denies Ms. Laws's challenge to RCW 4.24.350(2) under article I, section 12 of the Washington State Constitution. *See Gibson*, 2009 WL 564703, at *5; *Pruitt*, 2009 WL 481293, at *2.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court DENIES Ms. Laws's motion for partial
3 summary judgment (Dkt. # 25).

4 Dated this 12th day of November, 2009.

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7 JAMES L. ROBART
8 United States District Judge
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